

From: [Christina V. Rayburn](#)
To: [Darrell Atkinson](#); [Spencer Hosie](#); [Amazon/MasterObjects \[INT\]](#); [Diane Rice](#); [Jerry Shaw](#)
Cc: [Moez M. Kaba](#)
Subject: RE: Re:
Date: Tuesday, August 23, 2022 5:13:47 PM
Attachments: [2022-8-23 - Draft - Joint Letter Requesting Guidance re Trial Date14.docx](#)

Darrell,

Thank you for your draft. I apologize for my delayed response. We were trying to assess the availability of our witnesses and find more availability for this trial. Attached please find a revised version of the draft joint letter to the Court regarding the trial date. You will note that we are now proposing additional availability in November to address your concern about delay.

Best,
Christy

Christina V. Rayburn

HUESTON HENNIGAN LLP

D: 949.356.6412
crayburn@hueston.com
[Biography](#)

From: Darrell Atkinson <datkinson@hosiellaw.com>
Sent: Friday, August 12, 2022 4:52 PM
To: Christina V. Rayburn <crayburn@hueston.com>; Spencer Hosie <shosie@hosiellaw.com>; Amazon/MasterObjects [INT] <AmazonMasterObjects@hueston.com>; Diane Rice <drice@hosiellaw.com>; Jerry Shaw <jshaw@hosiellaw.com>
Cc: Moez M. Kaba <mkaba@hueston.com>
Subject: RE: Re:

Christy:

I attach the draft joint letter with MasterObjects' position inserted. I also attach an Ex. A that should be included with the letter. If Amazon has any edits to its portion of the letter, then we will need to see it again.

Regards,

Darrell

From: Christina V. Rayburn <crayburn@hueston.com>
Sent: Thursday, August 11, 2022 3:46 PM
To: Spencer Hosie <shosie@hosiellaw.com>; Amazon/MasterObjects [INT] <AmazonMasterObjects@hueston.com>; Diane Rice <drice@hosiellaw.com>; Darrell Atkinson <datkinson@hosiellaw.com>; Jerry Shaw <jshaw@hosiellaw.com>

Cc: Moez M. Kaba <mkaba@hueston.com>

Subject: RE: Re:

Spencer,

Attached please find a draft joint letter to the Court requesting guidance regarding the trial dates. Please provide your section, or let me know if you have proposed changes to the format.

Best,
Christy

Christina V. Rayburn

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[Biography](#)

From: Spencer Hosie <shosie@hosiellaw.com>

Sent: Thursday, August 11, 2022 12:38 PM

To: Christina V. Rayburn <crayburn@hueston.com>; Amazon/MasterObjects [INT] <AmazonMasterObjects@hueston.com>; Diane Rice <drice@hosiellaw.com>; Darrell Atkinson <datkinson@hosiellaw.com>; Jerry Shaw <jshaw@hosiellaw.com>

Cc: Moez M. Kaba <mkaba@hueston.com>

Subject: Re:

No. We do NOT so stipulate. We inform the court of your issue, MO reluctance to agree to a many month open ended delay, which is inherently prejudicial to any plaintiff, and then see what the Court would like to do.

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From: Christina V. Rayburn <crayburn@hueston.com>

Sent: Thursday, August 11, 2022 12:20:52 PM

To: Spencer Hosie <shosie@hosiellaw.com>; Amazon/MasterObjects [INT] <AmazonMasterObjects@hueston.com>; Diane Rice <drice@hosiellaw.com>; Darrell Atkinson <datkinson@hosiellaw.com>; Jerry Shaw <jshaw@hosiellaw.com>

Cc: Moez M. Kaba <mkaba@hueston.com>

Subject: RE: Re:

Thank you, Spencer. I'm not sure I understand what you are envisioning for this joint filing. Can I prepare a Joint Stipulated Request and [Proposed] Order to Change Time Per Civil L.R. 6-2?

Christina V. Rayburn

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From: Spencer Hosie <shosie@hosiellaw.com>
Sent: Thursday, August 11, 2022 12:13 PM
To: Christina V. Rayburn <crayburn@hueston.com>; Amazon/MasterObjects [INT] <AmazonMasterObjects@hueston.com>; Diane Rice <drice@hosiellaw.com>; Darrell Atkinson <datkinson@hosiellaw.com>; Jerry Shaw <jshaw@hosiellaw.com>
Cc: Moez M. Kaba <mkaba@hueston.com>
Subject: Re:

Do what? Send us your proposed fling and we will speak for ourselves. Joint means joint.

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From: Christina V. Rayburn <crayburn@hueston.com>
Sent: Thursday, August 11, 2022 12:11:51 PM
To: Spencer Hosie <shosie@hosiellaw.com>; Amazon/MasterObjects [INT] <AmazonMasterObjects@hueston.com>; Diane Rice <drice@hosiellaw.com>; Darrell Atkinson <datkinson@hosiellaw.com>; Jerry Shaw <jshaw@hosiellaw.com>
Cc: Moez M. Kaba <mkaba@hueston.com>
Subject: RE: Re:

Great, thank you. Please do so at your earliest convenience.

Christina V. Rayburn

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From: Spencer Hosie <shosie@hosiellaw.com>
Sent: Thursday, August 11, 2022 12:10 PM
To: Christina V. Rayburn <crayburn@hueston.com>; Amazon/MasterObjects [INT] <AmazonMasterObjects@hueston.com>; Diane Rice <drice@hosiellaw.com>; Darrell Atkinson <datkinson@hosiellaw.com>; Jerry Shaw <jshaw@hosiellaw.com>
Cc: Moez M. Kaba <mkaba@hueston.com>
Subject: Re:

We will. Needs perforce to be a joint filing.

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From: Christina V. Rayburn <crayburn@hueston.com>
Sent: Thursday, August 11, 2022 12:08:11 PM
To: Spencer Hosie <shosie@hosiellaw.com>; Amazon/MasterObjects [INT] <AmazonMasterObjects@hueston.com>; Diane Rice <drice@hosiellaw.com>; Darrell Atkinson <datkinson@hosiellaw.com>; Jerry Shaw <jshaw@hosiellaw.com>
Cc: Moez M. Kaba <mkaba@hueston.com>
Subject: RE: Re:

OK, and you do not want to provide your trial conflicts going forward, in the event that the Court cannot reset to the prior date?

Christina V. Rayburn

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From: Spencer Hosie <shosie@hosiellaw.com>
Sent: Thursday, August 11, 2022 12:06 PM
To: Christina V. Rayburn <crayburn@hueston.com>; Amazon/MasterObjects [INT] <AmazonMasterObjects@hueston.com>; Diane Rice <drice@hosiellaw.com>; Darrell Atkinson <datkinson@hosiellaw.com>; Jerry Shaw <jshaw@hosiellaw.com>
Cc: Moez M. Kaba <mkaba@hueston.com>
Subject: Re:

I thk amz needs to inform court of apparent amz counsel conflict. Perhaps the Court can reset to prior date.

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From: Christina V. Rayburn <crayburn@hueston.com>
Sent: Thursday, August 11, 2022 10:56:39 AM
To: Spencer Hosie <shosie@hosiellaw.com>; Amazon/MasterObjects [INT] <AmazonMasterObjects@hueston.com>; Diane Rice <drice@hosiellaw.com>; Darrell Atkinson <datkinson@hosiellaw.com>; Jerry Shaw <jshaw@hosiellaw.com>
Cc: Moez M. Kaba <mkaba@hueston.com>
Subject: RE: Re:

Hi Spencer,

I'm following up again on the below. We need to get this issue resolved promptly so that the parties and the Court can have clarity regarding schedules and case deadlines. Will you be able to join us in

proposing trial dates that do not conflict with your calendar?

Best,
Christy

Christina V. Rayburn

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D: 949.356.6412
crayburn@hueston.com
[Biography](#)

From: Christina V. Rayburn <crayburn@hueston.com>
Sent: Wednesday, August 10, 2022 12:20 PM
To: Spencer Hosie <shosie@hosiellaw.com>; Amazon/MasterObjects [INT] <AmazonMasterObjects@hueston.com>; Diane Rice <drice@hosiellaw.com>; Darrell Atkinson <datkinson@hosiellaw.com>; Jerry Shaw <jshaw@hosiellaw.com>
Cc: Moez M. Kaba <mkaba@hueston.com>
Subject: RE: Re:

Spencer,

I am following up on the below.

Best,
Christy

Christina V. Rayburn

HUESTON HENNIGAN LLP

D: 949.356.6412
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[Biography](#)

From: Christina V. Rayburn <crayburn@hueston.com>
Sent: Tuesday, August 9, 2022 4:03 PM
To: Spencer Hosie <shosie@hosiellaw.com>; Amazon/MasterObjects [INT] <AmazonMasterObjects@hueston.com>; Diane Rice <drice@hosiellaw.com>; Darrell Atkinson <datkinson@hosiellaw.com>; Jerry Shaw <jshaw@hosiellaw.com>
Cc: Moez M. Kaba <mkaba@hueston.com>
Subject: RE: Re:

Thanks, Spencer. Based on our trial schedule and pre-planned holiday travel, we could commit to any dates between January 9, 2023 and February 17, 2023. Speaking for my own trial conflict in San Francisco, I have no reason to believe it will be trailed, and certainly cannot bank on such a

possibility. I can say that it already got extended once, from June, so it will not be extended again.

Christina V. Rayburn

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[Biography](#)

From: Spencer Hosie <shosie@hosiellaw.com>

Sent: Tuesday, August 9, 2022 3:13 PM

To: Christina V. Rayburn <crayburn@hueston.com>; Amazon/MasterObjects [INT] <AmazonMasterObjects@hueston.com>; Diane Rice <drice@hosiellaw.com>; Darrell Atkinson <datkinson@hosiellaw.com>; Jerry Shaw <jshaw@hosiellaw.com>

Cc: Moez M. Kaba <mkaba@hueston.com>

Subject: Re:

We are still working the issue. We are very uncomfortable with a multi month, open ended trial delay. Can you be more specific about amz counsel availability as close to current trial date as possible ?

Related question: in my experience, most State Superior courts tend to trail trials, even when nominally hard set. Routine in SF and Santa Clara counties. Do you have reason to believe that will not happen in HH two cases?

Perhaps a call makes sense. I am in depo tomorrow, but shd clear by mid aft.

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From: Christina V. Rayburn <crayburn@hueston.com>

Sent: Tuesday, August 9, 2022 2:32 PM

To: Spencer Hosie <shosie@hosiellaw.com>; Amazon/MasterObjects [INT] <AmazonMasterObjects@hueston.com>

Cc: Moez M. Kaba <mkaba@hueston.com>

Subject: RE: Re:

Spencer,

I'm following up on the below request. Were you able to discuss the trial date with your client?

Best,
Christy

Christina V. Rayburn

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D: 949.356.6412
crayburn@hueston.com
[Biography](#)

From: Christina V. Rayburn <crayburn@hueston.com>
Sent: Monday, August 8, 2022 9:54 PM
To: Spencer Hosie <shosie@hosielaw.com>; Amazon/MasterObjects [INT]
<AmazonMasterObjects@hueston.com>
Cc: Moez M. Kaba <mkaba@hueston.com>
Subject: RE: Re:

Monster Energy v. Vital Pharms., Case No. 18-cv-1882, C.D. Cal. Starts tomorrow.

Christina V. Rayburn

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D: 949.356.6412
crayburn@hueston.com
[Biography](#)

From: Spencer Hosie <shosie@hosielaw.com>
Sent: Monday, August 8, 2022 9:32 PM
To: Christina V. Rayburn <crayburn@hueston.com>; Amazon/MasterObjects [INT]
<AmazonMasterObjects@hueston.com>
Cc: Moez M. Kaba <mkaba@hueston.com>
Subject: Re:

Case and jurisdiction pls.

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From: Christina V. Rayburn <crayburn@hueston.com>
Sent: Monday, August 8, 2022 9:25:29 PM
To: Spencer Hosie <shosie@hosielaw.com>; Amazon/MasterObjects [INT]
<AmazonMasterObjects@hueston.com>
Cc: Moez M. Kaba <mkaba@hueston.com>
Subject: RE:

Thank you, Spencer. Moez is currently in a trial that is expected to last into the first week of September. Given that trial, and his Don Lee trial that follows, we cannot make an earlier date work.

Best,
Christy

Christina V. Rayburn

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[Biography](#)

From: Spencer Hosie <shosie@hosielaw.com>
Sent: Monday, August 8, 2022 5:41 PM
To: Amazon/MasterObjects [INT] <AmazonMasterObjects@hueston.com>
Subject:

Counsel: we are discussing AMZ request for trial delay with our client tomorrow. Question: if the Court can accommodate an earlier trial, what date works for collective Amz counsel?

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HUESTON HENNIGAN LLP

August 23, 2022

Judge William Alsup
San Francisco Courthouse, Courtroom 12 – 19th Floor
450 Golden Gate Avenue, San Francisco, CA 94102

Dear Judge Alsup:

The parties hereby request the Court's guidance regarding the dates for the Pretrial Conference and Trial in this matter.

I. Amazon's Position

On August 5, 2022, this Court issued a "CLERK'S NOTICE ADVANCING PRETRIAL CONFERENCE, JURY SELECTION, AND JURY TRIAL DATES BY ONE WEEK." Dkt. No. 382. In that notice, the Court advanced the Final Pretrial Conference from October 12, 2022 to October 5, 2022 and the first date of Trial from October 17, 2022 to October 11, 2022. *Id.* The Court set the trial for eight court days. *Id.*

This change creates trial conflicts for both Amazon's lead counsel in this matter, Mr. Moez Kaba and Ms. Christy Rayburn, for one of Amazon's key witnesses, Blair Hotchkies, and for Stephen G. Kunin, Amazon's expert witness regarding inequitable conduct.

Mr. Kaba is co-lead trial counsel in a trial currently scheduled to begin in Los Angeles Superior Court on September 26, 2022. Mr. Kaba expects that that trial will be ongoing at least through October 11. Although Mr. Kaba has disclosed the MasterObjects trial conflict to the Los Angeles Superior Court, that court has not yet agreed to move the trial date. The case is *Don Lee Farms v. Savage River, Inc.*, Case No. BC662838. That previously scheduled trial conflicts with the current dates for the Pretrial Conference and trial in this case.

Ms. Rayburn is co-lead trial counsel in a trial scheduled to begin in San Francisco Superior Court on October 3, 2022. That trial is expected to last for 5 days, through October 7. The case is *New Pacific Hotel Inc. v. Sonder USA Inc.*, Case No. CGC-20-586949. That previously scheduled trial conflicts with the current date for the Pretrial Conference, and is projected to run through the Friday before trial in this matter begins on the following Tuesday. Such a schedule would make it difficult for Ms. Rayburn to prepare adequately for this trial.

Mr. Hotchkies was the original architect of Amazon's accused Autocomplete functionality in the 2007/2008 time period. He was disclosed in Amazon's initial disclosures as knowledgeable regarding the development, structure and functionality of Amazon's accused technology and the value of that technology to Amazon. He was deposed in this matter and Amazon presently intends to present him as a witness at trial. Mr. Hotchkies has pre-planned PTO spanning from October 12, 2022 through October 19, 2022. While he could have made the original trial dates work, because Amazon will go second in the presentation of evidence, the new trial dates present a conflict.

Mr. Kunin is an expert witness in *Ravgen, Inc. v. Quest Diagnostics Inc.*, Case No. 21-cv-9011 in the Federal District Court for the Central District of California. Since February of this year, that trial has been set to commence on October 11, 2022, the same date for which trial in this matter was recently rescheduled. The *Ravgen* trial is estimated to last 5 days.

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Counsel is aware that trials can move, or the underlying matters can be resolved. That said, we wanted to alert the Court as soon as possible to the conflicts presented by the new Pretrial Conference and trial dates.

Amazon assumes, based on the Clerk's Notice, Dkt. No. 382, that the Court cannot conduct trial on the dates previously scheduled. Mr. Kaba also has a trial conflict spanning November 28, 2022 through December 9, 2022.¹

Accordingly, Amazon respectfully requests that trial in this matter be rescheduled to a time between November 7, 2022 and November 18, 2022, between January 9, 2023 and January 27, 2023, between February 6, 2023 and February 17, 2023, or between February 27, 2023 and March 25, 2023. Amazon is also willing to provide additional dates, if needed. Counsel understands that, pursuant to Civil Local Rule 40-1, trial continuances are to be sought by noticed motion, and is willing to file such a motion. That said, based on the discussion between the parties, the closeness of the trial date, and the recency of the date change, Amazon seeks the Court's guidance regarding the trial date, to allow for planning for the parties and the Court.

Finally, Amazon notes in response to MasterObjects' Position that, given the recent change in trial dates, MasterObjects' counsel, expert, and witnesses will likely have to change their hotel and travel arrangements regardless. Amazon informed counsel for MasterObjects of its counsels' conflicts with the new trial dates on August 8, 2022, only three days after the trial date was changed. Since then, Amazon has gathered the availability of its witnesses and experts for the newly set trial dates, as well as for Amazon's proposed alternate dates set forth herein.

II. MasterObjects' Position

MasterObjects opposes Amazon's request that the trial in this case be reset until sometime in 2023. The Court set a trial date for October 17, 2022 in January of this year. See ECF 239. On August 5, this Court advanced the trial by one week, to October 11, 2022. See ECF 382. Amazon now says that it has two "co-lead" counsel in this matter, Mr. Moez Kaba and Ms. Christy Rayburn. Amazon says that Ms. Rayburn has a trial in Superior Court concluding by October 7, 2022, the *New Pacific Hotel Inc. v. Sonder USA Inc.* case. On June 13, 2022, Hueston Hennigan counsel asked the Court in the *Sonder* case to move the trial in that case to October 4, while fully aware of the imminent trial in this case. More, Ms. Rayburn is not listed on the masthead in that case in Hueston Hennigan mid-June filings. See Ex. A.

Second, Mr. Kaba says that he is lead trial counsel on a different case, *Don Lee Farms v. Savage River, Inc.* This Superior Court trial has been long set, and would have left Mr. Kaba unavailable for the Pretrial Conference in this matter. While Amazon says that this trial would conclude the Friday before the long-set trial date in this case, there is never any assurance that a trial will end exactly when expected.

Amazon counsel disclosed none of these imminent conflicts in this case.

Delays inherently are prejudicial to the plaintiff. But, more concretely, MasterObjects' experts and witnesses have long blocked out the trial date set in this case eight months ago, as have MasterObjects' counsel. All have made hotel and travel arrangements accordingly, including MasterObjects' counsel blocking a book of hotel rooms for the long-set trial.

We appreciate that dockets change and dates can shift. But, here, Amazon seems to have built in

¹ This matter is *Palantir Techs. Inc. v. Abramowitz, et al.*, Case No. 19-cv-6879 in the Northern District of California.

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significant undisclosed conflicts risks, which it now suggests should stay this *MasterObjects v. Amazon* trial for an indeterminate period.

Respectfully,

Moez M. Kaba

/s/ Spencer Hosie

Spencer Hosie

Lead Trial Counsel for Plaintiff MasterObjects, Inc.